

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-677

ALCOR SCIENTIFIC, INC.

vs.

COMPANION HEALTH SERVICES, INC.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Companion Health Services, Inc. (Companion), appeals from a judgment of the Superior Court confirming an arbitration award in favor of the plaintiff, Alcor Scientific Inc. (Alcor), in a contract dispute. On appeal, Companion advances several related arguments based on Alcor's assignment of its rights under the contract to a third party. Companion also contends that the award should be vacated because the arbitrator refused to hold a hearing on standing in violation of the arbitration forum's rules and Companion's due process rights. Finally, Companion claims that the arbitrator exceeded her powers in arbitrating a claim where Alcor lacked standing, and that the judge erroneously confirmed an arbitration award procured by Alcor's fraud and the arbitrator's "evident partiality." We affirm.

Background. The arbitrator found the following facts. Companion and Alcor entered into a contract on October 20, 2011, whereby Alcor, a manufacturer of enteral feeding pumps known as Sentinel pumps, permitted Companion to rent a number of the pumps for use in nursing homes and rehabilitation facilities during the pendency of the contract, provided that Companion simultaneously purchased the necessary consumable accessories (hereinafter, pump sets) for exclusive use with the Alcor pumps in a "bundled pricing" model. The agreement contained certain minimum periodic purchasing requirements regarding the pump sets which, if met, would ensure that Alcor received sufficient revenue to cover the rental cost of the pumps. The contract explicitly barred Companion from assigning its rights, but no such provision applied to Alcor. The contract contained an arbitration provision,¹ and an agreement that the laws of Rhode Island apply. Between October 2011 and April 2012, both parties adhered to the agreement.

On April 26, 2012, Alcor and a third party, Amsino International Inc. (Amsino), entered into a contract (Amsino

¹ The arbitration provision stated, "Any dispute relating to this Agreement which the parties are unable to resolve shall be settled by a sole arbitrator in a binding, non-reviewable, and non-appealable dispute resolution process conducted in accordance with the Non-Administered Arbitration Rules of the CPR Institute for Dispute Resolution, 336 Madison Ave, New York, New York 10017."

agreement) in which Alcor assigned to Amsino Alcor's sales and distribution rights to certain customers, including Companion. Alcor did not transfer its rights or title to the pumps in the Amsino agreement. Even under the Amsino agreement, Companion remained obligated to purchase pump sets for use with Alcor's pumps.

After November 2012, Companion stopped paying rent on Alcor's pumps and meeting pump set minimum purchase obligations, and instead purchased pump sets from another Sentinel pump distributor to use with Alcor's pumps. Alcor commenced an action in the Superior Court against Companion, alleging breach of contract and unjust enrichment. Companion countered that due to the Amsino agreement Alcor had no standing to pursue the action, and that Alcor and Amsino, not Companion, had breached the contract. Companion moved to stay the case and compel arbitration based on the arbitration clause in the 2011 contract.

Arbitration proceedings ensued under the International Institute for Conflict Prevention and Resolution (CPR) Rules for Non-Administered Arbitration (Rev. 2007). Shortly before the arbitration, Companion sought leave to file a dispositive motion to address Alcor's standing. The arbitrator denied Companion's motion and directed the parties to address the issues raised by Companion as a part of the upcoming arbitration hearing. After

a two-day evidentiary hearing, the arbitrator found that Alcor had standing under the Alcor-Companion agreement, and that Alcor and, by assignment, Amsino, performed all contractual obligations to Companion. The arbitrator issued awards in favor of Alcor in the sum of \$109,299 -- \$69,349 in damages and \$39,950 for attorney's fees and costs (together, the arbitration award). After a hearing, a judgment of the Superior Court entered on July 28, 2016, confirming the arbitration award.

Discussion. Although the parties briefed the case under Massachusetts law, they agreed at oral argument that Rhode Island law governed the dispute.² "To preserve the integrity and efficacy of arbitration proceedings, judicial review of arbitration awards is extremely limited" (citation omitted). Lemerise v. Commerce Ins. Co., 137 A.3d 696, 699 (R.I. 2016).³

² As noted, the contract in question contained a provision that provided Rhode Island law governed. Even if Massachusetts law governed, however, the result here would be no different. See G. L. c. 251, § 12; Katz, Nannis & Solomon, P.C. v. Levine, 473 Mass. 784, 790 (2016) ("An error of law or fact [in an arbitration award] will not be reviewed by a court unless there is fraud; even a grossly erroneous decision is binding in the absence of fraud").

³ Rhode Island General Laws § 10-3-12 provides limited grounds to vacate an award: "(1) Where the award was procured by corruption, fraud or undue means[;] (2) Where there was evident partiality or corruption on the part of the arbitrators, or either of them[;] (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in hearing legally immaterial evidence, or refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of

Because "[p]ublic policy favors the finality of arbitration awards, and such awards enjoy a presumption of validity" (citation omitted), Cumberland Teachers Ass'n v. Cumberland Sch. Comm., 45 A.3d 1188, 1189 (R.I. 2012), a reviewing court's task "is merely 'to determine whether the arbitrator has resolved the grievance by considering the proper sources [of] the contract . . . but not to determine whether the arbitrator has resolved the grievance correctly'" (citation omitted). Prospect CharterCARE, LLC v. Conklin, 185 A.3d 538, 544 (R.I. 2018). Even if an arbitrator makes a factual or legal error, "such a mistake would not be a proper basis upon which to vacate the arbitration award." Id. at 546.

The parties have also briefed the issues under the Federal Arbitration Act (FAA). See 9 U.S.C. § 10(a) (2012). Under the FAA, "the sole question for us is whether the arbitrator (even arguably) interpreted the parties' contract, not whether [she or] he got its meaning right or wrong." Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 569 (2013). We construe Rhode Island law in a manner consistent with the FAA, and to the extent there is any conflict, the FAA supersedes State law to the contrary. See Lamps Plus, Inc. v. Varela, 139 S. Ct. 1407, 1415 (2019).

any party have been substantially prejudiced[; or] (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

1. Amsino agreement. Companion's arguments in this appeal largely turn on claims regarding the Amsino agreement. Companion asserts that it did not receive a copy of the assignment until approximately twenty days before the start of arbitration proceedings, and that the arbitrator's refusal to hold a hearing on standing and/or postpone the arbitration proceedings in these circumstances was in violation of the arbitration forum's rules, amounting to a violation of Companion's due process rights, and resulting in an award that was invalid from the outset.

"'[T]he framing of the precise issue [to be decided] is a procedural problem' that, as a matter of law, 'should be left to the arbitrator.' 'As long as the agreement to arbitrate is valid and the subject matter of the dispute is arbitrable, the arbitrator may frame the issues to be decided'" (citation omitted). Purvis Sys., Inc. v. American Sys. Corp., 788 A.2d 1112, 1115-1116 (R.I. 2002). Consequently, the arbitrator did not exceed her powers by denying Companion's request to frame the issue of standing by means of a prearbitration motion, and hearing the "evidence pertinent and material to the controversy" as part of the arbitration hearing itself. R.I. Gen. Laws § 10-3-12(3). The arbitrator conducted the arbitral proceedings in accordance with the rules of the tribunal, see CPR Rules for Non-Administered Arbitration, Rules 9, 12, which gave her

considerable discretion to conduct the proceedings in the manner she considered best. She "consider[ed] the proper sources [of] the contract" including documentary evidence, e-mails between the parties, and the conduct of the parties. Prospect CharterCARE, LLC, 185 A.3d at 544. Although Companion takes issue with the arbitrator's ensuing finding that Alcor retained title to the pumps, and had standing to enforce the contract with Companion, the asserted error does not rise to the level of "impropriety" necessary to vacate the ensuing award. Id., quoting Prudential Prop. & Cas. Ins. Co. v. Flynn, 687 A.2d 440, 441 (1996). See Oxford Health Plans LLC v. Sutter, 569 U.S. at 569 ("an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its [de]merits" [citation omitted]); DiSano v. Argonaut Ins. Co., 178 A.3d 982, 987-988 (2018).

Companion's claim that the arbitrator misinterpreted or misconstrued the language of the Amsino agreement similarly fails to state a basis for vacating the award. See id., citing Loretta Realty Corp. v. Massachusetts Bonding & Ins. Co., 83 R.I. 221, 227 (1955) (arbitrator's award will not be vacated for asserted error of law). The arbitrator considered the specific provisions of the contract, including, as she described it, the "provision that if there were a shortage in ordering a minimum amount of pump sets as detailed in the contract, that Alcor, and

thus, by assignment, Amsino, had the right to invoice Companion for a certain sum yearly on the contract's anniversary date." Although Companion may disagree with this interpretation of the contract, the arbitrator's extensive reasoning articulated in the award demonstrates that she did not exceed her powers. See R.I. Gen. Laws § 10-3-12(4); Prospect CharterCARE, LLC, 185 A.3d at 546-547.

2. Fraud. Companion claims that because Alcor did not provide a copy of the assignment until days before the commencement of the arbitration proceedings, the award was procured by fraud.⁴ In pursuit of these claims on appeal, Companion takes issue with various factual findings and credibility determinations made by the arbitrator, none of which comprises a proper basis to vacate an arbitration award. "[E]ven if the arbitrator had based [her] decision in part on a factual error, such a mistake would not be a proper basis upon which to vacate the arbitration award. Neither the narrow conditions delineated in § 10-3-12 nor our case law interpreting those conditions permits a court to vacate an arbitration award

⁴ Companion also asserts that the arbitrator exceeded her authority in deciding a claim where Alcor lacked standing, and that the ensuing award was therefore procured by fraud. For the reasons discussed supra, Companion's attempt to reopen the issue of Alcor's standing to enforce the contract is unavailing.

merely because it rests upon legal or factual misstatements."

Prospect CharterCARE, LLC, 185 A.3d at 546.

Although Companion claims that Alcor "withheld, stalled and delayed production of the Amsino [a]greement in discovery" until shortly before the start of the arbitration hearing, the arbitrator made a factual finding, based on the evidence presented at arbitration, that Companion knew of Alcor's distribution arrangement with Amsino in the course of business. Companion's assertion that the judge erred in confirming an arbitration award procured by Alcor's fraudulent concealment of the assignment is unavailing as a matter of law. See R.I. Gen. Laws § 10-3-12 (1).

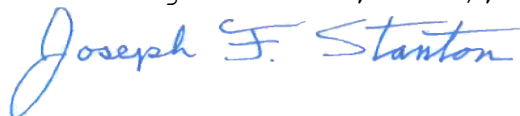
Similarly, although Companion claims that testimony on behalf of Alcor was unsupported by credible evidence, the arbitrator credited the testimony. Companion claims that Alcor personnel falsely testified under oath, but the arbitrator's factual finding was to the contrary. Differing opinions on credibility determinations do not form a basis on which we may revisit the merits of the ensuing award. See Prospect CharterCARE, LLC, 185 A.3d at 546.

3. Partiality. Finally, Companion claims that the Superior Court judge erred in confirming an award that arose from the arbitrator's "evident partiality." In support, Companion asserts that the arbitrator's denial of its motion to

dismiss for lack of standing "would lead a reasonable person to infer that the arbitrator was partial to Appellee Alcor." This argument is little more than an attack on an arbitrator who issued a ruling adverse to Companion. See DiSano, 178 A.3d at 988. This argument has not met the formidable burden necessary to overcome the presumption of validity to which an arbitration award is entitled. See Prospect CharterCARE, LLC, 185 A.3d at 544; Lemerise, 137 A.3d at 699.

Judgment affirmed.

By the Court (Sullivan,
Massing & Lemire, JJ.⁵),



Clerk

Entered: August 1, 2019.

⁵ The panelists are listed in order of seniority.